

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

***County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.***

Case No. 1:18-OP-45090

***The County of Cuyahoga v. Purdue Pharma
L.P., et al.***

Case No. 17-OP-45004

MDL NO. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**DEFENDANTS' MOTION TO EXCLUDE THE TESTIMONY OF
DAVID A. KESSLER, M.D. AND MATTHEW PERRI, III BS PHARM, Ph.D., RPh**

Defendants¹ move pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) to exclude the testimony of David A. Kessler, M.D.

¹ In this notice and the accompanying motion and brief, "Defendants" include Purdue Pharma, L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Johnson & Johnson; Noramco, Inc.; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Allergan plc f/k/a Actavis plc; Allergan Finance, LLC, f/k/a/ Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Watson Laboratories, Inc.; Warner Chilcott Company, LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc., f/k/a Watson Laboratories, Inc. - Salt Lake City; Actavis Laboratories FL, Inc., f/k/a Watson Laboratories, Inc. - Florida; Insys Therapeutics, Inc.; Mallinckrodt plc; Mallinckrodt LLC; SpecGx LLC; AmerisourceBergen Drug Corporation; Andia, Inc.; Cardinal Health, Inc.; CVS Indiana, LLC; CVS Rx Services, Inc.; Discount Drug Mart, Inc.; HBC Service Company; Henry Schein, Inc.; Henry Schein Medical Systems, Inc.; McKesson Corporation; Miami-Luken, Inc.; Prescription Supply, Inc.; H. D. Smith Holding Company; H. D. Smith

and Matthew Perri, III BS Pharm, Ph.D., RPh for the reasons given in the accompanying memorandum of law, which is incorporated here.

Respectfully Submitted,

Dated: June 28, 2019

/s/ Mark S. Cheffo

Mark S. Cheffo

DECHERT LLP

Three Bryant Park

1095 Avenue of the Americas

New York, NY 10036

Tel: (212) 698-3500

Mark.Cheffo@dechert.com

*Counsel for Defendants Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue Frederick
Company*

Co-Liaison Counsel for Manufacturer Defendants

Holdings, LLC; H. D. Smith, LLC d/b/a HD Smith, f/k/a H.D. Smith Wholesale Drug Co.; Health Mart Systems, Inc.; Rite Aid of Maryland, Inc. Rite Aid Of Maryland, Inc.; d/b/a Rite-Aid Mid-Atlantic Customer Support Center, Inc.; Walgreen Co.; Walgreen Eastern Co.; and Walmart Inc. f/k/a Wal-Mart Stores, Inc.

Teva Pharmaceutical Industries Ltd., Allergan plc, and Mallinckrodt plc are respectively an Israeli corporation, Irish holding company, and Irish company that are not subject to and contest personal jurisdiction for the reasons explained in their pending motions to dismiss for lack of personal jurisdiction; they are specially appearing to join this motion as a result of the Court's deadline to file dispositive and Daubert motions, and, thus, they do not waive and expressly preserve their pending personal jurisdiction challenges.

On June 10, 2019, Insys Therapeutics, Inc. and its affiliates each filed a voluntary case under chapter 11 of United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which cases are being jointly administered under Case No. 19-11292 (KG). In light of this bankruptcy proceeding, Insys does not join any of the *Daubert* motions for summary judgment motions to be filed in the MDL Track One cases.

/s/ Carole S. Rendon

Carole S. Rendon
BAKER & HOSTETLER LLP
Key Tower 127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Telephone: (216) 621- 0200
Fax: (216) 696-0740
crendon@bakerlaw.com

*Counsel for Defendants Endo Health Solutions Inc.
and Endo Pharmaceuticals Inc.; Par
Pharmaceutical, Inc., and Par Pharmaceutical
Companies, Inc.*

Co-Liaison Counsel for Manufacturer Defendants

/s/ Enu Mainigi

Enu Mainigi
WILLIAMS & CONNOLLY LLP
Enu Mainigi
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com

Counsel for Defendant Cardinal Health, Inc.

Co-Liaison Counsel for Distributor Defendants

/s/ Shannon E. McClure

Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Telephone: (215) 851-8100
Fax: (215) 851-1420
smcclure@reedsmith.com

*Counsel for Distributor Defendant
AmerisourceBergen Drug Corporation*

Co-Liaison Counsel for Distributor Defendants

/s/ Geoffrey Hobart

Geoffrey Hobart
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-5281
ghobart@cov.com

*Counsel for Distributor Defendant
McKesson Corporation*

Co-Liaison Counsel for Distributor Defendants

/s/ Kaspar Stoffelmayr

Kaspar Stoffelmayr
BARTLIT BECK LLP
54 West Hubbard Street
Chicago, IL 60654
Telephone: (312) 494-4434
Fax: (312) 494-4440
kaspar.stoffelmayr@bartlitbeck.com

Counsel for the Walgreens Defendants

Liaison Counsel for Chain Pharmacy Defendants

CERTIFICATE OF SERVICE

I, Lindsey B. Cohan, hereby certify that the foregoing document as served via the Court's ECF system to all counsel of record.

/s/ Lindsey B. Cohan
Lindsey B. Cohan